

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CD INTELLECTUAL PROPERTY	)	
HOLDINGS, LLC,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 05-414-JJF
v.	)	
	)	
AMAZON.COM, INC.,	)	
	)	
Defendant.	)	
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	)	
AMAZON.COM, INC. and A9.COM, INC.,	)	
	)	
Plaintiffs,	)	
	)	C.A. No. 06-041-JJF
v.	)	
	)	
CENDANT CORPORATION, TRILEGIANT	)	
CORPORATION, ORBITZ, LLC, ORBITZ, INC.,	)	
BUDGET RENT A CAR SYSTEM, INC.,	)	
and AVIS RENT A CAR SYSTEM, INC.,	)	
	)	
Defendants.	)	

**DECLARATION OF JAMES V. FAZIO, III**  
**IN OPPOSITION TO AMAZON.COM'S MOTION FOR CONSOLIDATION**

I, James V. Fazio, III, declare as follows:

1. I am an attorney with the law firm of Paul, Hastings, Janofsky & Walker LLP, counsel for defendants in C.A. No. 06-41-JJF. I have personal knowledge of the following facts and, if called upon to do so, I could and would testify competently thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the complaint filed on June 20, 2005 by Cendant Publishing, Inc. against Amazon.com, Inc. in the United States District Court for the District of Delaware entitled *Cendant Publishing Co., Inc. v. Amazon.com, Inc.* (Civil Action No. 05-414-JJF).

3. Attached hereto as Exhibit B is a true and correct copy of a July 18, 2005 news article entitled "Amazon countersues Cendant" obtained from the [www.news.com](http://www.news.com) website.

4. Attached hereto as Exhibit C is a true and correct copy of Plaintiffs Amazon.com, Inc. and A9.com, Inc.'s Opposition to Defendants' Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) Or, In The Alternative, to Dismiss, Stay or Transfer the Action Pursuant to the First-to-File Rule.

5. Attached hereto as Exhibit D is a true and correct copy of the original complaint filed on October 29, 2004 by Cendant Publishing, Inc. against Amazon.com, Inc. in the United States District Court for the District of Delaware entitled *Cendant Publishing Co., Inc. v. Amazon.com, Inc.* (Civil Action No. 04-1405-GMS).

6. On August 12, 2005, Defendants filed a motion to transfer Plaintiffs' Western District of Washington case to this District. On that same date, Defendants also filed a motion to dismiss all claims against Cendant (the parent corporation); a motion to dismiss the complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure or, in the alternative, for a more definite statement pursuant to Rule 12(e); and a motion to stay all discovery pending resolution of the motions.

7. Attached hereto as Exhibit E is a true and correct copy of *Aerotel, Ltd. v. Verizon Communications, Inc.*, 2005 WL 3358670 (S.D.N.Y. Dec. 6, 2005).

8. Attached hereto as Exhibit F is a true and correct copy of *Applied Materials, Inc. v. Advanced Semiconductor Materials America, Inc.*, 1994 U.S. Dist. LEXIS 17569 (N.D. Cal. Apr. 19, 1994).


9. Attached hereto as Exhibit G is a true and correct copy of *Liqui-Box Corp. v. Reid Valve Co., Inc.*, 1989 U.S. Dist. LEXIS 17189 (W.D. Pa. Sep. 15, 1989).

10. Attached hereto as Exhibit H is a true and correct copy of *Syngenta Seeds, Inc. v. Monsanto Co.*, 2004 U.S. Dist. LEXIS 17821 (D. Del. Aug. 27, 2004).

11. Attached hereto as Exhibit I is a true and correct copy of *Syngenta Seeds, Inc. v. Monsanto Co.*, 2005 U.S. Dist. LEXIS 4651 (D. Del. Mar. 24, 2005).

12. Attached hereto as Exhibit J is a true and correct copy of *Wang Laboratories, Inc. v. Mitsubishi Elecs. America, Inc.*, 1993 U.S. Dist. LEXIS 21372 (C.D. Cal. Jul. 20, 1993).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 16th day of February, 2006 at San Diego, California.

By:  \_\_\_\_\_  
JAMES V. FAZIO, III

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of February, 2006, the attached **DECLARATION OF JAMES V. FAZIO, III IN OPPOSITION TO AMAZON.COM'S MOTION FOR CONSOLIDATION** was served upon the below-named counsel of record at the address and in the manner indicated:

John W. Shaw, Esquire  
Young Conaway Stargatt & Taylor  
The Brandywine Building  
1000 West Street, 17<sup>th</sup> Floor  
Wilmington, DE 19801

**HAND DELIVERY**

Lynn H. Pasahow, Esquire  
Fenwick & West, LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041

**VIA FEDERAL EXPRESS**

*/s/ John G. Day*

\_\_\_\_\_  
John G. Day